

CONTRACT NO. GS-OOP(D)-12116

Between

UNITED STATES OF AMERICA

and

ANACONDA COPPER MINING COMPANY

THIS CONTRACT, effective November 10, 1951, between the United States of America, acting by and through the Defense Materials Procurement Agency, its successors, assigns and duly authorized representatives, hereinafter referred to as the "Government" (pursuant to the authority contained in the Defense Production Act of 1950, as amended, and Executive Order No. 10161, as amended and supplemented) and Anaconda Copper Mining Company, a corporation organized and existing under the laws of Montana, hereinafter referred to as the "Contractor"

WITNESSETH:

WHEREAS, the General Services Administration (pursuant to Delegation No. 1 of the Defense Materials Procurement Agency, issued on September 14, 1951), acting for the United States of America, and Anaconda Copper Mining Company have heretofore entered into Letter Contract GS-OOP (D)-12116, accepted on November 10, 1951, and a letter amendment thereto accepted on March 28, 1952; and

WHEREAS, it is intended to replace such Letter Contract, as amended, with a formal Contract between Defense Materials Procurement Agency and Contractor;

NOW, THEREFORE, in consideration of the mutual promises herein contained, the parties hereto agree as follows:

#### ARTICLE I. PRODUCTION

Contractor shall proceed as expeditiously as possible and at its own expense with the development, equipment and preparation of its mining property known as the Yerington Mine located in Lyon County, Nevada, for the mining and treatment of approximately 11,000 tons of copper oxide ore per day of an estimated average grade of 0.97% copper which is believed to be sufficient to provide for production during the term of this Contract of copper precipitates containing approximately 384,000,000 pounds of copper recoverable as electrolytic refined copper (hereinafter referred to as "copper"). Such development, equipment and preparation shall be sufficient to enable Contractor to mine and treat copper oxide ore at the rate necessary to meet its obligations hereunder and shall include, but not be restricted to, waste material stripping, acquisition of mine equipment, haulage and dump trucks, installation and equipment of a primary crushing plant, coarse ore bin, secondary crushing plant, sulphuric acid plant, leaching plant, precipitation plant, housing and town site. Contractor has acquired a certain sulphur property known as the Leviathan Mine located in the Leviathan Mining District, Alpine County, California, and in addition shall proceed at its own expense and without delay to develop, prepare and equip such property for the mining and production of sulphur ore, including, but not restricted to, installation of mining equipment, roads and housing for the purpose of producing sulphur ore in quantities sufficient for the production of sulphuric acid at the Yerington Mine required for the

production of copper precipitates hereunder. Contractor shall at its own expense make such contracts and commitments for supplies and services (in connection with the development, equipment and preparation of both the Yerington and Leviathan Mines) as are necessary to accomplish the foregoing. The aforesaid properties developed, equipped and prepared as specified above are hereinafter referred to as the "Facilities," and all oxide copper ore taken from the Facilities will be used in the production of copper hereunder.

Production from the Facilities shall begin as soon as reasonably possible, but subject to any delays, interruptions or cessations of the nature provided for in Article XXI hereof, not later than December 6, 1953. Such production shall be and continue at a rate necessary to produce therefrom approximately 60,000,000 pounds of copper per year for the first two years of operation and 66,000,000 pounds of copper annually thereafter under the terms of this Contract; provided, however, that total production hereunder shall not exceed 384,000,000 pounds of copper.

#### ARTICLE II. SMEETING AND REFINING

Contractor hereby warrants that it has sufficient smelting and refining facilities available to it to enable it to meet its delivery obligations hereunder.

#### ARTICLE III. DISPOSITION OF PRODUCTION

Contractor's production hereunder (or, in respect of any calendar month, a quantity produced from any of Contractor's other properties equal to any part or all of the quantity produced in such month from said Yerington Mine) shall be disposed of as follows:

(a) The Government may require Contractor to sell and deliver to it all or any part of the production of any calendar month at a price determined pursuant to Article V and Article VI hereof. The Government shall give Contractor notice of such requirement in writing at least ten (10) days prior to any month to which such requirement is to apply.

(b) All or any part of the production of Contractor in any calendar month which is not sold to the Government under paragraph (a) above shall be offered by Contractor for sale to non-integrated users of copper in accordance with its usual methods of sale and at its then current selling price; provided, however, that such sale shall be for utilization only in the United States, its territories and possessions. Contractor may, however, retain up to 75% of such quantity for its own use, including sale or transfer to integrated users of copper. Nothing in this paragraph (b), however, shall be construed to obligate Contractor to sell, use or transfer such copper produced hereunder at a price less than the minimum price referred to in Article V hereof.

(c) Contractor may from time to time tender to the Government such quantities of the first 384,000,000 pounds of Contractor's production hereunder as shall not have been sold or otherwise disposed of by it under paragraphs (a) and (b) above, and the Government shall forthwith purchase the quantities so tendered, up to an aggregate maximum of 256,000,000 pounds, at the minimum price referred to in Article V hereof. Tenders to the Government hereunder of all or part of any month's production

shall be made in writing not later than ninety (90) days following the end of such month.

(d) The term "production" herein as applied to any calendar month means the recoverable copper contained in the precipitates produced during such month at the Facilities. Production hereunder for any calendar month shall be deemed available for delivery in the form of copper sixty (60) days after the close of such month.

#### ARTICLE IV. SPECIFICATIONS

(a) All copper derived from the production hereunder shall be in standard shapes and sizes analyzing a minimum of 99.9% pure and conforming to the American Society for Testing Materials Specification No. B-5 (or, if cathodes, B-115), latest revision as of the effective date hereof.

(b) All copper derived from the production sold and delivered to the Government under paragraphs (a) and (c) of Article III shall be in such standard shapes and sizes produced by Contractor at its Refinery at Great Falls, Montana, as the Government may specify.

#### ARTICLE V. PRICE

The price for copper sold and delivered to the Government under Article III(a) hereof shall be the higher of (1) the average monthly market price for domestic refinery copper as quoted by the Engineering and Mining Journal, Metal and Mineral Markets, for the calendar month of delivery adjusted to the price for New England delivery plus the established differential for deliveries to usual Midwest markets for the date of the notice given by the Government under said Article, or (2) 25.5¢ per pound f.o.b. usual Midwest markets (increased or decreased in accordance with the provisions of Article VI hereof) referred to in this Contract as the "minimum price." The price for copper sold and delivered to the Government under Article III (c) shall be the minimum price. All of the aforesaid prices shall be subject to adjustment to reflect Contractor's customary premiums for special shapes or allowances for cathodes when special shapes or cathodes are specified by the Government hereunder. For copper delivered to the Government f.o.b. Contractor's Refinery at Great Falls, Montana, the price to be paid therefor as aforesaid (either the market price or minimum price, as the case may be) shall be adjusted by deducting therefrom the net freight charge which otherwise would be payable by the Contractor in moving such copper from Black Eagle, Montana, to Chicago, Illinois, (such net freight charge being herein defined as the through freight charge for copper from Anaconda, Montana, to Chicago, Illinois, less the local freight charge for copper from Anaconda, Montana, to Black Eagle, Montana).

#### ARTICLE VI. ESCALATION

The minimum price per pound referred to in Article V hereof is based in part on the following estimated direct operating costs for the base month of April 1951:

a. Labor - Mining, Leaching and  
Precipitation Plant

Per lb. of  
Refined Copper

3.78¢

b. Labor - Smelting and Refining

1.23

c. Other Costs

Scrap Iron	2.02¢
Sulphur	2.73
Freight - Precipitates	.74
Freight - Blister	.91
Power	<u>.67</u>

Other Costs Total

7.07

12.08¢

The above amounts, accepted as representing "Labor - Mining, Leaching and Precipitation Plant," "Labor - Smelting and Refining" and "Other Costs," will be adjusted as of the end of March, June, September and December of each year. The basis for the adjustment will be the above amounts multiplied by:

a. Labor-Mining, Leaching and Precipitation Plant -- The percentage of change from the base month of April 1951 to the last month of the quarter in the index of average hourly earnings for the industry designated as "Mining, Metal, Copper" as published monthly by the U. S. Department of Labor, Bureau of Labor Statistics.

b. Labor-Smelting and Refining -- The percentage of change from the base month of April 1951 to the last month of the quarter in the index of average hourly earnings for the industry designated as "Manufacturing, Primary metal industries, Primary smelting and refining of copper, lead, and zinc" as published monthly by the U. S. Department of Labor, Bureau of Labor Statistics.

c. Other Costs -- The percentage of change from the base month of April 1951 to the last month of the quarter in the index of wholesale prices (1947-1949=100) for the group designated as "All commodities other than farm and food" as published monthly by the U. S. Department of Labor, Bureau of Labor Statistics. The index for the base month of April 1951 is agreed to be 117.1.

The aggregate of the direct operating cost adjustments as calculated above will, if equal to 1/4¢ per pound or more, increase or decrease the minimum price per pound referred to in Article V by an equivalent amount, applicable to deliveries made in the quarter following the next succeeding quarter after the month of the indices.

ARTICLE VII. DELIVERY AND STORAGE

(a) Contractor shall notify the Government in writing at least ten (10) days in advance of the anticipated date of delivery to the Government of each lot of copper, which notification shall contain the approximate weight of each lot and identification as to each grade. In no event shall any copper be shipped to the Government or for its account unless and until explicit shipping instructions are furnished by the Government. All copper tendered to the Government hereunder shall be in lots of not less than thirty (30) short tons. All copper delivered to

the Government pursuant to this Contract shall be prepared for shipment in accordance with Contractor's usual methods.

(b) Delivery of copper to the Government hereunder shall be f.o.b. common carrier's conveyance, Contractor's Refinery at Great Falls, Montana, and title shall pass to the Government upon issuance of such carrier's bill of lading. In the event the Government shall fail to supply shipping instructions to Contractor within thirty (30) days after Contractor's written notice to the Government of availability of such copper for delivery to the Government pursuant to the terms of this Contract, or if the Government so requests, Contractor shall cause such copper to be adequately stored at reasonable charges and will cause a storage certificate, in the form attached hereto and marked Exhibit "A," to be issued therefor. Title to copper placed in storage pursuant to the terms hereof shall pass to the Government, upon issuance of such a storage certificate, and such copper shall be considered as delivered for the purposes of this Contract.

(c) With respect to copper sold and delivered to the Government hereunder, Contractor shall act as forwarding agent for the Government without additional expense to the Government, to effect shipment of all such copper in accordance with instructions to be furnished by the Government and to process all necessary shipping documents. Costs incurred in placing copper f.o.b. common carrier's conveyance and handling charges in connection therewith shall be for Contractor's account.

#### ARTICLE VIII. WEIGHING, INSPECTION, SAMPLING AND ANALYZING

With respect to copper sold and delivered to the Government hereunder:

(a) Contractor's weight certificates shall govern and the cost of weighing shall be for Contractor's account. The Government may at its election and expense have any and all deliveries of such copper weighed by a licensed weigher and sampled and analyzed by recognized analysts selected by it. Standard Specifications of the American Society for Testing Materials, latest revision as of the date of the Contract, shall apply to the inspection, sampling and analyzing of any copper delivered under this Contract and in the investigation of any disputes that may arise from such inspection, sampling and analyzing.

(b) Any such copper which fails to meet the specifications set forth in Article IV hereof as determined by this Article, shall not be cause for cancellation of any deliveries hereunder but such copper shall be deemed rejected and shall be replaced by Contractor at its expense within thirty (30) days at the Government's point of destination in the United States unless the Government, in writing, within thirty (30) days, notifies Contractor of its acceptance of such copper under this Contract, and, in addition, Contractor shall reimburse the Government for the cost of the weighing, inspection, sampling and analysis of the defective copper being replaced.

#### ARTICLE IX. PAYMENT

Payment for copper sold and delivered to the Government hereunder shall be made promptly upon presentation to the Government of (1) Contractor's properly certified invoice, satisfactory to the Government, showing, among other things, grade, lot, marks, pieces, and weights; (2) Contractor's weight

certificates and certificates of analysis; and (3) copy of common carrier's bill of lading or storage certificate in the case of copper stored hereunder.

#### ARTICLE X. TERMINATION

The obligations of the parties hereunder shall cease and this Contract shall be terminated (except that the obligations of the parties hereto, with respect to the disposition of, and payment for, such quantity of copper as may have been produced hereunder prior to the time of such termination, shall remain in full force and effect until discharged in accordance with the terms hereof) either:

(a) subject to the provisions of Article XXI hereto, on December 6, 1959; or

(b) when Contractor has produced, hereunder, 384,000,000 pounds of copper (subject to adjustment pursuant to Article XI below); or

(c) when a total of 256,000,000 pounds of copper (subject to adjustment pursuant to Article XI below) shall have been purchased by the Government pursuant to Article III(c); or

(d) when through the operation of this Contract Contractor's cash return shall have reached 80% of its fixed investment in the Facilities. For the purposes of this subparagraph "cash return" shall mean the aggregate of (i) net profits before deduction of dividends, or amortization of fixed debt, but after deduction for taxes (except state income taxes), and (ii) charges for expenses not entailing an outlay of cash, such as, but not limited to, depreciation, accelerated amortization, depletion, and bad debt, or other valuation reserves. For the purposes of this subparagraph "fixed investment" shall mean the total amount, not exceeding \$31,360,000, actually expended or incurred by Contractor after March 26, 1951 in exploring, acquiring, developing and equipping the Facilities for production and operation hereunder, excluding interest charges during the construction period and fees or profits (if any) of affiliated companies;

whichever of the above events, (a), (b), (c), or (d), first occurs.

#### ARTICLE XI. ADJUSTMENTS

The figures of 384,000,000 pounds and 256,000,000 pounds, in Article X hereof, shall be adjusted as follows: for each ton of copper disposed of by Contractor hereunder at a price in excess of the minimum price each of said figures shall be reduced by 64.5 pounds for each 1/2¢ per pound by which the sales price exceeds the minimum price (fractions pro rata).

#### ARTICLE XII. REPORTS

Contractor shall furnish the Government from time to time, but not less frequently than quarterly, such reports as the Government may reasonably require, including but not limited to:

(a) the progress and costs of construction;

(b) the production and disposition of copper hereunder, and costs related thereto;

- (c) the actual operating costs of the Facilities; and
- (d) the actual costs of smelting and refining the copper precipitates produced from the Facilities.

These reports shall be in at least such detail as necessary to indicate the accumulation of Contractor's cash return as defined in Article X(d). Reports as of the close of Contractor's fiscal year shall be certified by an independent certified public accountant.

#### ARTICLE XIII. ADDRESSES

(a) Notices by the Government to Contractor provided for in this Contract shall be addressed to:

Anaconda Copper Mining Company  
25 Broadway  
New York 4, New York

(b) Notices by Contractor to the Government shall be addressed to:

Administrator  
Defense Materials Procurement Agency  
Washington 25, D.C.

or such other address as either party for itself may specify to the other in writing.

#### ARTICLE XIV. COMPLIANCE WITH APPLICABLE LAWS

In the performance of this Contract, Contractor shall comply with and give all stipulations and representations required by any applicable Federal, State, Municipal or local law, or Executive Order, or any applicable rules, orders, regulations or requirements of any government department or bureau, but nothing herein contained shall be considered as preventing Contractor from contesting in good faith the validity of such law, rule, order, regulation or requirement or any charge that Contractor has not complied therewith.

#### ARTICLE XV. WALSH-HEALEY ACT

There are hereby incorporated by reference all representations and stipulations required by the Walsh-Healey Public Contracts Act, as amended (41 U. S. Code 35-45), and regulations issued thereunder by the Secretary of Labor, such representations and stipulations being subject to all applicable rulings and interpretations of the Secretary of Labor which are now or may hereafter be in effect.

#### ARTICLE XVI. ANTI-DISCRIMINATION

In connection with the performance of work under this Contract, Contractor agrees not to discriminate against any employee or applicant for employment because of race, creed, color, or national origin; and further agrees to insert the foregoing provision in all subcontracts hereunder except subcontracts for standard commercial supplies or for raw materials.

#### ARTICLE XVII. CONTINGENT FEES

Contractor warrants that no person or selling agency has been employed or retained to solicit or secure this Contract upon an agreement or understanding for a commission, percentage, brokerage, or contingent fee, excepting bona fide employees or bona fide established commercial or selling agencies maintained by Contractor for the purpose of securing business. For breach or violation of this warranty, the Government shall have the right to annul this Contract without liability or in its discretion to deduct from the Contract price or consideration the full amount of such commission, percentage, brokerage, or contingent fee.

#### ARTICLE XVIII. INTEREST OF MEMBER OF CONGRESS

No member of or delegate to Congress, or resident commissioner, shall be admitted to any share or part of this Contract, or to any benefit that may arise therefrom; but this provision shall not be construed to extend to this Contract if made with a corporation for its general benefit.

#### ARTICLE XIX. ACCESS TO BOOKS AND RECORDS

Contractor agrees that the Government or any of its duly authorized representatives shall, while the Contract is in effect, and for a period of three (3) years thereafter, have access to and the right to examine any pertinent books, documents, papers and records of Contractor involving transactions related to this Contract.

Contractor further agrees to include the following provision, with appropriate insertions, in all its subcontracts (herein defined as any agreement with another party providing for construction, improvements, or other work called for by this Contract, whether or not that purpose is so specified in the agreement) hereunder:

"(Name of Subcontractor) agrees that the Government or any of its duly authorized representatives shall, until the expiration of three years after final payment under Prime Contract GS-OOP(D)-12116 between the United States of America and Anaconda Copper Mining Company, have access to and the right to examine any pertinent books, documents, papers and records of (Name of Subcontractor) involving transactions related to this Contract."

#### ARTICLE XX. ASSIGNMENT

Contractor shall not, without the prior written consent of the Government, sell, assign, or pledge this Contract or any of its rights, powers, privileges, duties or obligations thereunder; provided, however, that any moneys due or to become due under this Contract, but not including any advances made or to be made hereunder, may be assigned by the Contractor to a bank, trust company or other financing institution, including any Federal lending agency, pursuant to and in accordance with the Assignment of Claims Act of 1940, as amended, (31 U.S.C. 203, 41 U.S.C. 15).

All rights, powers, privileges, duties or obligations under this Contract shall inure to any successor or successors of Defense Materials Procurement Agency or any branch or agency of the Government to which the Defense Materials Procurement Agency shall hereafter delegate or assign



its authority to act for the Government hereunder.

#### ARTICLE XXI. FORCE MAJEURE

The time for performance by Contractor of its obligations hereunder shall be extended at its option by a period equivalent to any delays, interruptions, or cessations caused by force majeure (herein defined as any cause beyond Contractor's reasonable control and not due to its fault or negligence delaying construction or completion of the Facilities described herein or affecting or damaging such Facilities or the plants where Contractor's production will be smelted and refined or otherwise affecting or delaying the production or delivery of copper hereunder including, without limitation, acts of God, strikes, accidents, fire, explosion, flood, storm, power or water or manpower shortages, delays in transportation, inability to secure or delay in securing the materials, equipment and supplies necessary for the development, construction, equipment and operation of the Facilities, whether or not due to priorities or allocation requirements or other regulations or requirements of the Federal Government or any agency thereof, sabotage, war, whether declared or undeclared, and including present wars, act of any belligerent in any such war, riot, rebellion, revolution). Contractor shall give prompt notice to the Government of the occurrence of any such cause.

#### ARTICLE XXII. DEFAULT

Notwithstanding any other provision of this Contract, the Government may, by notice in writing to Contractor, cancel this Contract or any part thereof at any time, without payment of damages or penalty of any kind for such cancellation, in the event (a) a receiver, liquidator or trustee is appointed for Contractor or its property, or Contractor makes an assignment for the benefit of creditors, or Contractor becomes insolvent, or a petition is filed by or against Contractor pursuant to any of the provisions of the United States Bankruptcy Act, as amended, for the purpose of adjudicating Contractor a bankrupt, or for the reorganization of Contractor, or for the purpose of effecting a composition or rearrangement with Contractor's creditors, and such receiver, liquidator, or trustee is not discharged or any such petition filed against Contractor is not dismissed within sixty (60) days; (b) of the liquidation or dissolution of Contractor, whether voluntary or involuntary; (c) of default by Contractor in the performance of any of the terms, conditions or covenants of this Contract or any amendment or supplement thereto; or (d) of the determination by Government that Contractor obtained this Contract for the purpose of speculation.

#### ARTICLE XXIII. NON-WAIVER

The failure of either Contractor or the Government to insist in any one or more instances upon the performance of any of the terms, covenants or conditions of this Contract shall not be construed as a waiver or relinquishment of the future performance of any such term, covenant, or condition by the other party hereto, but the obligation of such other party with respect to such future performance shall continue in full force and effect.

#### ARTICLE XXIV. MODIFICATIONS

No oral statement of any person shall modify or otherwise affect the terms, conditions or specifications of this Contract

ARTICLE XXV. CANCELLATION

Notwithstanding any other provision hereof, this Contract shall automatically terminate without penalty as to any portion of the Contract remaining uncompleted on June 30, 1962; provided, however, that Contractor's obligation with respect to storage and shipment of copper sold to the Government prior to such date and the Government's obligation to make payment therefor shall survive the termination of this Contract.

ARTICLE XXVI. REPLACEMENT OF LETTER CONTRACT

This Contract supersedes and replaces for all intents and purposes the Letter Contract accepted on November 10, 1951, as amended, heretofore referred to; provided, however, that all documents, instruments and agreements which may have been issued in connection with said Letter Contract, as amended, are to remain in full force and effect.

IN WITNESS WHEREOF, the parties hereto have caused this document to be duly executed on this 23<sup>rd</sup> day of March, 1953.

UNITED STATES OF AMERICA  
Acting by and through  
Defense Materials Procurement Agency

Harold H. Gurney  
Deputy Administrator

ANACONDA COPPER MINING COMPANY

By [Signature]  
Title President

ATTEST:

By [Signature]

Title SECRETARY

(CORPORATE SEAL)

EXHIBIT "A"

Certificate No. \_\_\_\_\_

ANACONDA COPPER MINING COMPANY

COPPER STORAGE CERTIFICATE  
(Non - Negotiable)

\_\_\_\_\_, \_\_\_\_\_, 195\_\_.

THIS IS TO CERTIFY that the undersigned holds for storage at its refinery, Great Falls, Montana, for the account of the United States of America, acting by and through the Defense Materials Procurement Agency, its successors, assigns and duly authorized representatives, hereinafter referred to as "Government," \_\_\_\_\_ pounds of electrolytic copper in the form of

<u>Lot No.</u>	<u>Number of Pieces</u>		
_____	_____	Cakes	_____ Pounds
_____	_____	Wire Bars	_____ "
_____	_____	Ingots	_____ "
_____	_____	Ingot Bars	_____ "
_____	_____	Cathodes	_____ "
_____	_____	Other Shapes	_____ "

The undersigned shall not be responsible for any loss or damage to the above-mentioned copper due to acts of God, mobilizations, war, foreign war (whether declared or undeclared), rebellion, revolution, blockade, act of any belligerent in any such war, requirement, regulation, restriction or other act of any government or governments, whether legal or otherwise or acts of public enemies.

The undersigned will cause said copper to be delivered from storage f.o.b. common carrier's conveyance, its refinery at Great Falls, Montana, upon receipt of reasonable notice from the Government requesting such delivery. The obligation of the undersigned to deliver said copper as above set forth shall be subject to delays caused by strikes, lockouts, differences with workmen, accident, fire, explosion, inability to secure or delay in securing cars or lighters, fuel, electrical power, or other supplies or material, delays or interruptions in transportation by rail, water, or otherwise, damage to or destruction of plants, and any other contingency whether or not of the nature or character hereinbefore specifically enumerated.

It is understood that the Government will cause this Certificate to be returned to the undersigned promptly after all copper covered hereunder has been delivered from storage in accordance with instructions of the Government.

ANACONDA COPPER MINING COMPANY

By \_\_\_\_\_  
Title